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PROMOTION AND PROTECTION OF HUMAN RIGHTS

HUMAN RIGHTS DEFENDERS

Report of Ms. Hina Jilani, Special Representative of the Secretary-General, pursuant to Commission on Human Rights resolution 2000/61

Addendum

Mission to Kyrgyzstan*
(30 July-4 August 2001)

* The executive summary of this mission report is being circulated in all official languages. The report itself is contained in the annex to the present document and is being circulated in the language of submission and Russian only.

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Executive Summary

The present report, submitted in accordance with Commission on Human Rights resolution 2000/61, presents and analyses information received by the Special Representative of the Secretary General on Human Rights Defenders during her visit to Kyrgyzstan from 30 July to 4 August 2001.

The report contains background information on the country, an overview of the legal framework followed by the principal findings and concerns of the Special Representative with regard to the situation of human rights defenders in Kyrgyzstan. These include considerations with regard to freedom of association and assembly, the situation of particular categories of human rights defenders (members of human rights organizations, journalists, youth groups and environmental activists) as well as particular concerns with regard to the independence of the judiciary, the rights of ethnic minorities, religious tolerance and women human rights defenders.

The Special Representative notes with satisfaction that the legal environment in Kyrgyzstan is in accordance with international standards in the field of human rights. However, there is continuous legislative activity in terms of changes to laws, which does not always go in the direction of the improvement of human rights. In addition, there are restrictions in practice on freedom of assembly, expression and association. The lack of freedom of expression and the press is in this regard of serious concern to the Special Representative. She is further concerned that the right to protest against human rights violations has been repressed; this is one of the major causes of the strained relationship between the Government and human rights activists. The Special Representative notes that the Government's tolerance of criticism of its policies and conduct that violate human rights has diminished over the years. The Special Representative considers that the State should recognize the importance of the civil society and its essential role in Kyrgyzstan's transition to democracy. Despite the Government's stepping back from its commitment to democratic governance and protection of human rights in more recent years, the Special Representative is convinced that the possibility of renewing that commitment is not remote.

In the light of the above, the Special Representative recommends the following to the Government of Kyrgyzstan:

(a) Restrictions imposed by laws and regulations on the freedom of assembly, association, and expression should be reviewed and brought into conformity with the spirit of the Constitution and the obligations of Kyrgyzstan under international human rights law;

(b) The Government is urged to ensure that the legislative reforms under consideration reinforce guarantees for the protection of human rights and provide for the establishment of effective mechanisms for their implementation;

(c) In order to improve the environment for the work of human rights defenders, dialogue between the government and civil society should be initiated and measures should be taken to build mutual trust and respect. A positive step in this direction would be the withdrawal of cases against human rights defenders;

(d) The Special Representative strongly urges the Government to investigate violations committed against human rights defenders and to bring the responsible persons to justice. Public officials found responsible for such actions should be prosecuted in order that the growing tendency of these officials to intimidate human rights defenders may be effectively deterred;

(e) The Special Representative urges the Government to respect the rights of citizens to hold peaceful demonstrations and assemblies and to adhere to international standards on the use of force against demonstrators;

(f) It is recommended that the Government strengthen the institutions of government - in particular the judiciary - in order to build public confidence and make a positive impact on the situation of human rights in the country, or promise better protection to human rights defenders;

(g) Training of persons involved in the administration of justice, as well as training of Government officials, could improve the judicial and administrative systems;

(h) Finally, the Special Representative urges the Government to adopt appropriate measures to disseminate widely and ensure full observance of the Declaration on human rights defenders. This Declaration as well as all other human rights standards should in particular be made available to schools and institutions of higher education.

Annex

Report of Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders, on her mission to Kyrgyzstan (30 July-4 August 2001)

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Introduction

1. This report has been prepared pursuant to resolution 2000/61. It presents and analyses information received by the Special Representative of the Secretary-General on human rights defenders during her visit to Kyrgyzstan from 30 July to 4 August 2001. By letter dated 27 April 2001 addressed to the Permanent Mission of Kyrgyzstan to the United Nations Office at Geneva, the Special Representative sought the agreement of the Government for a visit to this country. On 7 June 2001, the Government of Kyrgyzstan granted this request.

2. The visit to Kyrgyzstan was the first country mission carried out by the Special Representative since the establishment of her mandate. She chose Kyrgyzstan primarily because of its reputation as an "island of democracy" in a region experiencing difficulties in achieving a reasonable degree of democracy. At the same time recent events in the country were reported to have triggered off a process of reversal from the commitment to respect the values of democracy and human rights that the Constitution promised. While the country's legal framework could be considered an example of sound foundations laid down by an emerging democracy to promote and protect human rights, trends in governance, particularly practices that were being reported as impeding the work of human rights activists, raised serious concerns. The Special Representative had addressed three communications to the Government of Kyrgyzstan between January and August 2001, expressing her concerns regarding the situation of human rights defenders in the country. The Special Representative recognized the need for a comprehensive study of the situation of human rights defenders in Kyrgyzstan and to explore the political, social and economic context, to the extent that it affected the prospects for the promotion of human rights and protection of human rights defenders.

3. The Special Representative would like to thank the Government of Kyrgyzstan for extending her the invitation to visit the country. She would also like to express her sincere appreciation for the cooperation of the Government and the assistance provided to facilitate the gathering of all necessary and relevant information for this report.

4. During her visit, the Special Representative was able to meet with almost all the relevant authorities and officials as well as a wide section of the civil society, including human rights groups and individual defenders. A list of the persons she met during her visit is appended to this report. In addition to Bishkek, the Special Representative visited Osh, in southern Kyrgyzstan, which widened the perspective of the study and allowed the Special Representative to obtain a fuller view of the conditions under which human rights defenders operate.

5. The Special Representative would like to thank all the civil society groups, organizations and individuals who met with her and informed her of the situation of human rights defenders. These meetings were extremely useful for her in understanding the political, social and economic conditions that affect the ability of defenders to work for human rights and democratic development.

6. The Special Representative would also like to express her gratitude for the efficient cooperation and support provided by the office of the United Nations Development Programme (UNDP) in Bishkek. She appreciates in particular the assistance in organizing briefings with

representatives of United Nations and other international agencies. The briefings gave her valuable insights into the issues of governance raised by civil society actors, as well as an objective assessment of the situation of human rights defenders.

7. The Special Representative issued a press statement at the start of her mission to brief the press on her mandate, the visit and the objectives of the mission. At the end of the mission the Special Representative addressed a press conference in Bishkek to give her preliminary conclusions and recommendations.

I. CONTEXT OF THE MISSION

8. The mandate of the Special Representative of the Secretary-General on human rights defenders, as contained in Commission resolution 2000/61, requires her:

(a) To seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;

(b) To establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration;

(c) To recommend effective strategies better to protect human rights defenders and follow up on these recommendations.

9. In order to clarify the scope of her mandate, the Special Representative would like to recall at the outset that she considers all activities in relation to human rights and fundamental freedoms recognized in international human rights instruments and commitments as activities for the promotion, protection and realization of human rights. The situation of all those individuals, groups and organs of society engaged in such activities or experiencing any form of prejudice because of any such activity would, therefore, fall within the scope of her mandate.

10. The responsibility placed on the Special Representative for establishing cooperation and conducting dialogue with Governments and other interested actors on the effective implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms obliges her to take note of the human rights situation prevailing in the country in the context of which defenders are conducting their activities.

11. Furthermore, no comprehensive assessment of the situation of human rights defenders can be made without reference to the conditions that impair or promote and protect human rights, and practices that result in human rights violations.

12. The information sought, received and examined for a report on any country situation would, therefore, have to cover the whole range of human rights concerns relevant to the scope of inquiry under the mandate of the Special Representative. Conclusions drawn and

recommendations made on the basis of this information make reference to the political, social and economic conditions and the situation of human rights in the country to the extent that they are relevant to the implementation of the Declaration or the protection of human rights defenders.

II. BACKGROUND INFORMATION

A. General

Geography

13. Kyrgyzstan, a Central Asian State, is bordered by China, Kazakhstan, Tajikistan and Uzbekistan. The country covers an area of 199,900 m^2.

Population

14. The multi-ethnic population, estimated to be 4.7 million, is composed of the Kyrgyz, who are in the majority (60.8 per cent), Russians (15.3 per cent) and Uzbeks (14.3 per cent). In all there are 80 different nationalities inhabiting the country. The official language is Kyrgyz. In May 2000 the Kyrgyz legislature made Russian also an official language. Islam is the professed religion of 75 per cent of the population; 20 per cent profess the Russian Orthodox faith. Ninety-seven per cent of the population over the age of 15 is literate (can read and write); the female literacy rate amongst the same age group is estimated at 96 per cent. There are grave apprehensions that lack of resources may make it difficult to sustain the high rate of literacy in the country.

Education

15. Kyrgyzstan maintains its strong pre-independence tradition of educating all citizens. The 1993 Constitution (art. 32) guarantees free basic education at State institutions to all citizens. Education is compulsory up to secondary level. Free education at the vocational, secondary, specialized and higher levels also continues to be offered by the State to qualified individuals. A programme of curriculum changes and restructuring of the system of education to suit contemporary needs is severely hampered by lack of financial resources and loss of teachers. Kyrgyz is being increasingly used as the medium of instruction in schools. However, lack of textbooks has been a problem for the transition from Russian to Kyrgyz. The 1992 law on education laid down the education policy and established the Ministry of Education as the central administrative body of the national system.

16. A vast majority of the institutions of higher learning are State-funded and are located in Bishkek. Unlike the school system, the language of instruction remains predominantly Russian. Long-term plans indicate a leaning towards a more Western style of university study. In the mid-1990s there was a wave of "Kyrgyzification" of education, which seems to have abated to some degree.

17. The Special Representative had the opportunity to visit the Humanitarian University in Bishkek. The university was established 23 years ago and offers a wide variety of subjects in the field of humanities. The Special Representative was told that students are encouraged to form associations, and that complete academic freedom was the institution's policy. The university would like students to have a wider exposure and encourages students from other countries in the region. It offers various programmes to attract other foreign students as well.

18. Ms. Bolchurova Ishengul, the dean of the university, expressed her eagerness to add human rights studies to the subjects offered by the university. She also apprised the Special Representative of a proposed project to organize courses and training on human rights for public officials. The university had applied to the Council of Europe for a grant for this project. The university was also exploring the possibilities of identifying experts in order to offer specialized courses on refugees, internally displaced persons and migrants. Another idea under consideration was the establishment of a human rights documentation centre under the patronage of the university. However, lack of financial resources was a major hindrance in implementing these initiatives. The university received very little financial aid from the State. The dean called for the support of the United Nations agencies, in particular for the Office of the High Commissioner for Human Rights to supply material on human rights, which was not readily available and was desperately needed for human rights education and awareness initiatives undertaken by the university.

Health care

19. The Soviet system of free universal health care inherited by Kyrgyzstan is in the process of transition to a public health insurance system. The former system did generally provide a sufficient number of doctors, nurses and other health professionals, as well as medical clinics and hospitals. Transition to the new system has been slowed by lack of funds. The system has further degenerated because of the lack of properly trained health professionals and short supply of medicines and essential equipment. Health facilities are generally said to be inadequate and unsanitary. The Constitution guarantees health protection and benefits through the network of State public health institutions.

Social welfare

20. Nearly one third of Kyrgyzstan's population is estimated to be living below the poverty line. The ever-increasing influx of refugees, particularly from Tajikistan, creates additional economic and social pressures. While the Soviet social welfare system allocated benefits very broadly, the post-Soviet Government has sought to make substantial reductions in State social protection payments. The State justifies these reductions as being necessary and emphasizes the policy under which the more vulnerable and needy sections of the society are targeted for social protection. This has left many of those previously receiving some kind of benefit outside the social protection net. A 1998 social security law effectively deprives all non-citizens of rights related to social security benefits. The Government claims to be making efforts to maintain social support programmes, despite severe economic constraints. The social welfare priorities of the Government are emphasizing job creation and prevention of unemployment, reorganization of the social insurance and pension systems, and reforms in education and health care.

21. A critical issue of social protection is pensions. The standard pension eligibility age is 60 for men and 55 for women. While the Government has granted a series of increments in the amount of pensions, none of the adjustments has been able to keep pace with the impact of inflation on the real value of the pensions. The level of poverty to which pensioners are reduced is a cause of grave concern. The sufferings of pensioners are compounded by bureaucratic procedures that cause delays in payments. This has led to large demonstrations by pensioners bitterly decrying the situation they are facing. During many of these demonstrations, it was alleged that the police beat the demonstrators, including women, and arrested some of the organizers. In June 1998 Tursunbek Akunov, the leader of the Kyrgyz Human Rights Movement, was sentenced to 15 days in jail for organizing an unauthorized meeting.

22. The Special Representative met representatives of the Public Association for Social Protection of the Population, an association representing 600,000 pensioners. She was told that the average monthly pension was US$ 8-10. On average, pensioners had to pay US$ 6-7 for utilities and housing, leaving almost nothing for food and other necessities. The Special Representative was informed that protests by the pensioners had evoked no action from the Government to review the policies and redress the grievances of the pensioners. According to the information received, those organizing or participating in picket lines and demonstrations were harassed and intimidated by members of the State National Security Service and beaten by police. There were complaints that leaders of the association were followed as a tactic to intimidate them and to deter others from participating in the protest. The group also alleged that there was an attempt on the life of one of its members.

Structure of the State

23. The Constitution of 1993 prescribes three branches of the State, legislative, executive and judicial, with a separation of powers and functions.

24. The legislature comprises a bicameral parliament (the Jogorku Kenesh). The upper house, known as the Legislative Assembly, with 35 deputies, sits continuously and is elected on the basis of popular representation. The lower house, known as the Assembly of People's Representatives, with 70 deputies, works in sessions and is elected on the basis of territorial representation.

25. Deputies of both houses are elected for a term of five years. Powers of the legislature include the appointment, upon nomination by the President, of judges of the Constitutional Court, the Supreme Court and the Higher Arbitration Court. The power to remove judges is also within the competence of the legislature. The parliament must approve the Prime Minister nominated by the President. The President may, however, dissolve parliament if it fails three times to approve a nominee.

26. The President is the Head of State and the Prime Minister the Head of Government in the executive branch of the State. A Cabinet of Minister is appointed by the President on the recommendation of the Prime Minister. The office of the President is the most powerful, with wide powers under the Constitution. The President is elected every five years. Qualifications for the Presidency include command of the State language, Kyrgyz; however, Russian was recognized as an official language by resolution of the parliament.

27. The judicial branch of the State comprises the Constitutional Court, the Supreme Court, the Higher Arbitration Court, provincial courts, Bishkek City Court, district and municipal courts, provincial and City of Bishkek arbitration courts, and military courts.

General observations

28. Kyrgyzstan declared its independence on 31 August 1991, and direct presidential elections were scheduled for October 1991. Askar Akayev, who had been President of the republic since 1990, received 95 per cent of the popular vote in the first elections held after independence and became the country's first popularly elected President. Kyrgyzstan adopted its first Constitution in 1993. In March 1990, while still part of the Soviet Union, the republic had elected a 350-member Jogorku Kenesh (parliament), which remained in power until it dissolved itself in September 1994. President Akayev was re-elected in December 1995. In February 1996 a referendum was held that gave a 95 per cent approval for extending the powers of the President beyond what the Constitution had originally provided. The amendment to the Constitution significantly expanded the powers of the President at the expense of the legislature, empowering the President to conduct domestic and foreign policy and to name and dismiss Cabinet ministers and judges without consulting parliament. While international observers found the referendum to be generally fair and free, the opposition claimed otherwise.

29. Parliamentary and presidential elections held in March and October 2000, respectively, became controversial amidst allegations of grave irregularities and violation of international standards of fair and free elections. President Akayev's re-election for a third term was seen as a violation of the Constitution, which allows the President two consecutive terms. The candidacy of President Akayev was made possible by a decision of the Constitutional Court on 13 July 1998, which ruled that President Akayev could serve a third term because he had been elected to his first term under the old Soviet-era constitution. The Government reacted to protests that followed the elections by taking measures that were widely seen as repressive and in violation of fundamental rights, particularly the freedoms of expression and assembly. It was reported that human rights defenders were particularly targeted, and the problems they had been facing for the past few years became more acute. These violations have raised social and political tensions, placing additional strains on democracy and raising concerns about the prospects for the promotion and protection of human rights.

30. In the immediate post-independence period, Kyrgyzstan's reputation as the model Central Asian democracy was not undeserved. Despite complex social and political problems and serious economic constraints, the country's approach to democratization has differed greatly from that of other States in the region. Since independence Kyrgyzstan has made impressive strides in some regards. Initiatives for economic and political reforms were seriously pursued. Less than two years after independence a constitution was adopted that promised a sound democratic dispensation and guarantees for the protection of human rights. In the early years of its independence the country saw a proliferation of political parties and NGOs, a relatively free press and the growth of civil society. A substantial body of laws was developed for the implementation of democratic norms and the establishment of institutional arrangements for the enforcement and application of these laws had begun. Many observers have remarked that until the dissolution of parliament in September 1994, Kyrgyzstan showed promising prospects for democratic development and commitment to respect for human rights and fundamental

freedoms. According to some analysts and human rights activists, Kyrgyzstan's greatest asset has been its democratic image, and President Akayev's regime has reportedly used this image to gain international goodwill and cooperation. Nevertheless, the Government did take a number of measures that gave credence to promises of democratic reform. This period of advancement was marred by instances of intolerance of political opposition and clear favouritism of the Kyrgyz majority in the legal and political systems. However, a degree of democratic development was evident and could have been sustained if there had been a stronger belief in the efficacy of democratic practices in reversing conditions of political and economic adversity.

31. The first significant indication of a step back from democracy was the eruption of confrontation in 1994 between the Government, on the one side, and the parliament and press, on the other. The cause of this confrontation, according to some accounts, was reports that parliamentary commissions were about to issue reports on their investigations of corruption and irregularities in the Government concerning such matters as the sale of gold mines to foreign firms, foreign investments and privatization. This confrontation continued until the dissolution of the parliament in September 1994, six months before its term was to end. Some newspapers were closed down, allegedly because they had published reports of corruption. The pattern of confrontation between the authorities and a section of the press has continued to this day. The powers of the President extended as a result of the 1996 referendum are generally considered as undermining the independence of the judiciary and an encroachment on the domain of the legislature.

32. The treatment of the political opposition during and since the 1995 elections indicates further deterioration in the level of tolerance of political dissent. The failure to materialize the rapid transitions envisioned under the reform agenda resulted in dissatisfaction and frustration. Although some elements of reform were put in place quickly, the absence of others brought the overall system to a halt. Important elements of the 1993 Constitution remained unimplemented. Many have expressed frustration at the repeated violation of the spirit of the Constitution as President Akayev increasingly sought to use personal executive power to promote his policies.

33. The suppression of activities of human rights defenders in recent years has also created serious apprehensions with respect to the prospects for the promotion of human rights. There seems to be general agreement amongst human rights and other civil society groups that the situation has taken a critical turn after the elections in 2000. The wave of repression following protests by various sections of the society has seriously damaged the relationship between the State and the civil society.

B. Legal framework

1. International obligations

34. Kyrgyzstan has accepted a wide range of international obligations in the field of human rights. It is party to the following international instruments: International Covenant on Economic Social and Cultural Rights; International Covenant on Civil and Political Rights and its Optional Protocol; International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Political Rights of Women; the Convention on Consent to Marriage,

Minimum Age for Marriage and Registration of Marriage; Convention on the Nationality of Married Women; International Convention on the Suppression and Punishment of the Crime of Apartheid; International Convention against Apartheid in Sport; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention for the Suppression of the Traffic in Persons, and of the Exploitation of the Prostitution of Others; Slavery Convention and Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Rights of the Child; the Convention relating to the Status of Refugees and Protocol relating to the Status of Refugees; Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization (UNESCO); Convention (No. 157) concerning the Establishment of an International System for the Maintenance of Rights in Social Security of the International Labour Organization (iLO), ILO Convention (No. 118) concerning Equality of Treatment of Nationals and Non-nationals in Social Security, ILO Convention (No. 97) concerning Migration for Employment, ILO Convention (No. 103) concerning Maternity Protection, Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States; and Helsinki Final Act of the Organization for Security and Cooperation in Europe. Article 12.3 of the Constitution states that "international treaties and other norms of international law which have been ratified by the Kyrgyz Republic shall be a constituent and directly applicable part of the legislation of the Kyrgyz Republic."

2. Domestic legislation

(a) The Constitution

35. Regarding recognition of human rights and fundamental freedoms, the Constitution of Kyrgyzstan contains comprehensive and exemplary provisions which protect civil and political rights as well as social, economic and cultural rights. Protection is guaranteed against discrimination and infringement of rights and freedoms on the basis of origin, sex, race, nationality, language, creed, and political and religious beliefs, or by any other public or personal circumstances. Article 16 of the Constitution enumerates human rights and fundamental freedoms explicitly recognized, and ends with the statement that such an enumeration shall not be interpreted as negating or diminishing other universally recognized human rights and freedoms. Amongst other rights the right to life, personal security, freedom of expression and dissemination of thoughts, ideas, opinion and information, freedom of the press, the freedom to assemble peacefully and without weapons, and to meetings and demonstration are mentioned in the article.

36. Citizens and their organizations are allowed to engage in any action or activity, except those prohibited by the Constitution or the law. The enjoyment of rights, however, is inseparable from the duty of a citizen that is necessary for the security of private or national interests.

37. Citizens have the right to participate in governing both directly and through their representatives, in the discussion and adoption of laws, and in decisions of national and local importance. The publication of laws and other normative legal acts concerning the rights, freedoms and duties of an individual and a citizen is mandatory before they can come into force.

38. Article 17 of the Constitution places a bar to the enactment of laws that abolish or infringe human rights and freedoms. Restrictions on the exercise of rights and freedoms shall be allowed by the Constitution and laws only for the purposes of ensuring respect for the rights and freedoms of others and for ensuring public safety and constitutional order.

39. Freedom of association is guaranteed by article 8 of the Constitution. Political parties, trade unions and other "public associations" may be organized on the basis of "free will and unity of interests". The State guarantees the rights and lawful interests of such public associations.

40. The duty of the State, and of all its bodies and officials, to the "full, absolute and immediate" protection of the rights and freedoms of citizens, and the restoration of violated provisions, is recognized in article 38.

41. The Constitution guarantees protection from arbitrary and unlawful interference with private and family life, infringement of honour and dignity, and breach of secrecy of correspondence and telephone conversations.

42. The Constitution recognizes the right to education, health, social maintenance by the State, protection of labour, housing, a healthy and safe environment, and the freedom of culture, art, literature, science and the mass media.

43. The Constitutional Court has been granted the power to render decisions on the constitutionality of laws and on practices in the application of laws which affect the constitutional rights of citizens.

(b) Laws

44. Civil legislation in Kyrgyzstan comprises the Civil Code, decrees of the President, resolutions adopted by the Government and other laws of a civil nature. The principles of civil law enunciated in the Civil Code acknowledge equality, inadmissibility of arbitrary interference in private affairs, and the right to compensation against illegal action of the State resulting in violation of a civil right. Provisions regarding protection against defamation and the rights and status of public associations and religious organizations are also contained in the Civil Code. Other provisions relevant to human rights are related to environmental protection and the enforcement and protection of human rights and freedoms. Limitations on the exercise of civil rights may be imposed where actions of citizens and legal entities are intended exclusively to cause harm to another person.

(i) Freedom of expression and the media

45. The 1992 Law on Mass Media No. 938 regulates the registration and activities of the print and electronic media. The law prohibits censorship of the mass media. Registration of the media is mandatory, and activities can only be carried out after the process of registration is completed. Authorities are required to review applications for registration within one month. Denial without grounds or delay in registration can be appealed in the court.

46. The law requires all private media to reveal their sources of funding. One of the conditions imposed by the law is to publish a refutation on demand of a person who claims to be aggrieved by the publication of false or defamatory information. Refusal to publish such refutation can result in a lawsuit. The media are barred from public dissemination of information classified as a State or commercial secret. Other restrictions imposed include a prohibition against incitement to overthrow the constitutional order, violation of the sovereignty and territorial inviolability of the Republic, propagation of war, violence and coercion or ethnic and religious intolerance. The media is protected from any compulsion to reveal the source of information, unless required by a court. At the same time it is not permitted to divulge the details of preliminary or judicial investigation without permission of the procurator or the court.

47. The law prescribes the rights and duties of reporters. These include the right to collect and disseminate information; free access to places where incidents have occurred, including natural calamities and demonstrations; and the right to be received by officials in the performance of their professional duties. Reporters are required to verify the authenticity of their reports.

48. Foreign media have been granted the right to accredit their correspondents in the territory of the Republic and to carry out their activities in accordance with the laws of the Republic.

49. In case of violation of the law, a court may terminate the activities of a media outlet. Decisions of the court in this regard are appealable.

50. In addition to the above, two laws related to the mass media were adopted in December 1997 on Guarantees and Free Access to Information and on the Protection of the Professional Activities of Journalists.

51. Libel remains a penal offence under the Criminal Procedure Code (art 127). Despite the changes in the Constitution regarding freedom of speech, no complementary changes have been made to the criminal law.

(ii) Freedom of association

52. The Civil Code contains some provisions in relation to religious organizations and "public associations", which are defined as non-profit, voluntary associations of citizens established on the basis of common interests to satisfy their spiritual and non-material needs. These organizations have the right to carry out activities for the purpose of achieving the goals for which they are created. Political parties, trade unions and public associations pursuing political goals are not permitted to receive funds from foreign citizens, foreign States and international organizations.

53. The 1997 law on "State Registration of Legal Entities" supplements the provisions of the Civil Code. It applies to labour unions, political parties and cultural associations. The law requires registration of all such organizations with the Ministry of Justice. The 1992 Labour Law provides for the right of workers to form and belong to trade unions. The law calls for

practices consistent with international standards, and permits affiliation with international trade union bodies. The law does not specify the procedures and conditions for holding strikes, although the Constitution grants the right to strike as determined by law.

54. A new law on "Non-Commercial Organizations" came into effect at the end of 1999. This law distinguishes NGOs from political parties, trade unions and religious organizations. The law required re-registration of all NGOs under the new law after it came into force.

(iii) Freedom of assembly

55. While the Constitution (art. 16) guarantees the right of peaceful assembly, article 148 of the Criminal Code bans unlawful assembly, demonstrations or picket lines, prescribing as punishment imprisonment for up to three years. The law requires official written permission for holding assemblies, rallies and demonstrations. Local authorities can restrict this freedom through administrative resolutions and regulations making the assembly unlawful and punishable under the Criminal Code. Administrative authorities may disallow demonstrations and rallies except at specific locations stipulated under regulations issued by them. Article 392 of the Kyrgyz Code on Administrative Liability gives power to the administrative authorities to impose a fine for unlawful assembly.

3. Other laws that impact on human rights activity

56. President Akayev issued Decree No. 24 on 14 January 2001 "On measures to be taken to guarantee and increase the effectiveness of rights and freedoms of the Kyrgyz Republic".

57. Resolution No. 30 of 1994 of Bishkek City Kanesh, as amended on 20 April 2000, gives discretionary powers to the deputies of the City Kanesh to allow public gatherings and to stipulate the specific place for any such gatherings, meetings or demonstrations. Such administrative resolutions have the force of law, and their violation could invite administrative penalties.

58. Presidential Decree No. 240 of 23 September 1999 is seen as a reinforcement of the propiska system which makes it mandatory for residents to register in the locality where they reside. Any change of residence requires re-registration. No travel documents are issued nor permission for international travel is granted without such registration, particulars of which have to be mentioned in the travel document. The propiska system places restrictions on the freedom of movement and choice of residence. The Human Rights Committee has expressed its concern regarding this practice and recommended its abolition in its concluding observations (CCPR/C/69/KGZ) on Kyrgyzstan's initial report on its compliance with the International Covenant on Civil and Political Rights.

4. Development of new legislation

59. Statement 358 of the Government of the Kyrgyz Republic, dated 18 July 2001 pertains to the draft law on introducing changes and amendments to some existing laws. The proposed changes to the Civil Code would have the effect of disallowing any non-profit organization to

function without being registered with the State authorities. Registration procedures would be completed within 10 days, unless specified otherwise by the authority. The State authority would have the power to demand explanations from public associations regarding their activities if any infringement of authorized aims and objectives is detected and issue warnings against such infringements. Public associations would be bound to respect the requirements of the State registering body. Non-commercial organizations would be required to disclose their source of funding and their assets to the tax authorities.

60. Amendments proposed to the Code on Administrative Responsibility would impose administrative penalties (fines) on non-profit organizations for failure to register. Administrative penalties would also be imposed on mass media outlets for carrying out activities without State registration.

61. Draft amendments to the Criminal Code propose the inclusion of "public calls to change the constitutional regime by force as well as agitation or propaganda in order to disrupt or weaken the constitutional regime" as an offence carrying the punishment of imprisonment for three years. If these acts are committed with the use of money or material resources from foreign organizations, the term of imprisonment can be extended to five years. The production and distribution of material containing appeals to disrupt or overthrow the constitutional regime by force, or threatening the sovereignty or unity of the Republic, or inciting war, violence and brutality, or committing acts contrary to the constitutional system and universally recognized international norms, either directly or through the media, would also be punished with imprisonment for three years.

62. A draft law for the establishment of an Ombudsman's office as a national human rights institution was sent to the parliament. However, the Parliamentary Human Rights Committee made several changes to the draft proposed by the Office of the President. Different proposals for the draft, known as the "Authorized Advocate for the Human Rights of the Kyrgyz Republic" law were under discussion. In a meeting with the Special Representative, the Chairperson of the Parliamentary Human Rights Committee stated that the draft proposed by the Committee strengthened prospects for the political and financial independence of the Office of Ombudsman, improved the procedures for the nomination and appointment of the Ombudsman, and extended the scope of the powers of the Office. The Special Representative was told that the Committee's draft provided for the nomination of the Ombudsman by the parliament, and accountability of the Ombudsman to the parliament. The Committee had taken a long time to deliberate over the law. Although the Committee was criticized for delaying the passage of the law, the Chairperson maintained that there was sincere interest in drafting a law that is comprehensive and in consonance with the Paris Principles on national human rights institutions. The Special Representative was told that the law has now been submitted to the parliament.

63. Human rights organizations have expressed concern at the delay in the passage of the law which has been pending since 1999. At the same time they voiced their apprehension that the law will not establish a mechanism that is sound enough to fulfil the purpose for which it is being created. It was alleged that it may become just another addition to the bureaucratic machinery and of no benefit to the citizens.

64. Another draft law, on the national language, designed to make Kyrgyz the national language of the State, is also pending. Previously, a law enacted in 1992 called for all public business to be conducted fully in Kyrgyz by 1997. However, a resolution of the parliament has allowed Russian to be used as an official language. The proposed law would reportedly make it necessary for all government representatives, State and local authorities, public officials, educational institutions and employees of public organizations to pass a Kyrgyz language test. A Linguistics Commission established before the 2000 elections has come under great criticism for assisting in eliminating many of the presidential candidates contesting elections against President Akayev on the basis of failing the Kyrgyz language test. Many of the civil society organizations see this draft law as a departure from the constitutional guarantee of non-discrimination.

III. MAIN FINDINGS AND CONCERNS

A. The media and journalists

65. The press and journalists have been especially targeted for exercising their freedom of expression and opinion on issues related to political repression, electoral irregularities, corruption, and criticism of acts of the authorities that violate human rights and norms of democratic governance.

66. For the first two years of independence the press in Kyrgyzstan enjoyed real political significance and freedom of publication. Despite a State Secrecy Committee that required material to be submitted in advance of publication, the press was able to raise issues of public interest. Since 1993, however, the Government has moved increasingly to impose control. Although formal censorship, imposed in August 1993, was reversed after strong protests by the press, more subtle methods of censorship continued to be applied, especially before and during the public referendum in 1994. In the post-referendum period, it has been reported that President Akayev's Government stepped up pressure against the press, resulting in a confrontation which has worsened after the parliamentary elections in February/March and the presidential elections in October 2000. High officials in the Government of President Akayev, including the Minister for National Security, are reported to have made public statements threatening criminal action against the press for publishing criticism of the Government. Since 1994, several newspapers have been forced to close down and many journalists have been convicted and sentenced under the libel laws.

67. It has been brought to the Special Representative's attention that Svobodnye Gory, a popular Russian-language newspaper and an organ of the parliament, was closed down by the Government in 1994, reportedly just as it was preparing to publish a parliamentary report on corruption. In the same year suits for defamation and slander were brought against the editor of Delo No by government officials resulting in a costly judgement. The newspaper has come under repeated pressure over the years. On 29 November 2000, the Ministry of National Security (MNS) charged the editor-in-chief, Victor Zapolski, and reporter Vadim Nochevkin with "divulging State secrets" for reporting on the closed trial of Feliks Kulov, an imprisoned opposition politician. According to Delo No, the information used by the newspaper came from

public sources, and in some cases from the MNS itself. The newspaper claimed it was being punished for exercising its right to freedom of expression and for being a voice of the political opposition in Kyrgyzstan.

68. It has been reported that these journalists, as well as the owner of the newspaper, were harassed and underwent lengthy interrogations at the Ministry of Internal Affairs. Their offices and homes were raided and searched. The editor told the Special Representative that he and his newspaper have been the subject of 11 civil cases for defamation and have faced two criminal cases for libel and one for tax evasion.

69. Another newspaper that has been persecuted for its criticism of government policy is Res Publica. In 1995 President Akayev brought a suit for libel against Res Publica, edited by Zamira Sadykova, for implying, without offering proof, that the President had acquired property abroad. Ms. Sadykova was convicted and received a suspended sentence of 18 months and was barred from carrying out her professional activities for the same period.

70. In May 1997 Zamira Sadykova, Aleksandr Alyanchikov, Bektash Shamshiev and Marina Sivasheva of Res Publica were reportedly tried and convicted of slander for the publication of an article in the newspaper alleging corruption against a State-owned gold mining concern. Ms. Sadykova and Mr. Alyanchikov received sentences of 18 months and Mr. Shamshiev and Ms. Sivasheva were fined and barred from working as journalists for 18 months. After an appeal, the court suspended Mr. Alyanchikov's sentence, though his 18-month ban on journalistic activity remained in effect. Mr. Shamshiev and Ms. Sivasheva's sentences were reversed. The court did not overturn Ms. Sadykova's sentence, but had her moved to a more lenient place of detention. She was subsequently released.

71. In March 2000, Ms. Sadykova was allegedly threatened with arrest for criticism of the electoral process published in Res Publica and warned that charges would be brought against her under the Criminal Code for "destabilizing the social order". This was followed by an honour and dignity suit against the newspaper filed by the President of the State television and radio corporation that resulted in a heavy fine imposed on the newspaper. The paper had accused him of restricting media freedom. According to the information received, Uchkun, the only printing house in the country, which is State owned, refused to publish or distribute the newspaper, forcing it to close down for four months. Prior to the parliamentary elections, copies of the newspaper were reportedly confiscated from kiosks by authorities in Osh and Jalal-Abad.

72. On 27 October 2000 Ms. Sadykova and Yrysbek Omurzakov were fined for an article published in Res Publica two years earlier that criticized the decision of the Ministry of Justice to revoke the registration of the Kyrgyz Committee for Human Rights (KCHR) in 1997 and register an alternative body with the same name in 1998 that allegedly had connections with the Government. In November 2000 an unidentified assailant allegedly attacked Tatiana Tayanova, another journalist from the same newspaper. The incident reportedly occurred in the presence of two militia officers. The assailant was arrested but no judicial proceedings were initiated against him. The newspaper continues to be under pressure and harassment from government agencies. The Special Representative was told that Zamira Sadykova had to leave the country because of threats and continuing persecution by the authorities.

73. Yrysbek Omurzakov, reporting for Res Publica, was sentenced in 1996 for slandering President Akayev and was sentenced again in May 1997 after the publication of articles in Res Publica criticizing the Government's privatization policies. He was released on bail in June but the charges were maintained. He was sentenced in September 1997 to six months in a prison colony. He appealed the verdict. His conviction was confirmed on 4 November, but he was released under a presidential amnesty. The Supreme Court found him guilty in January 1998 under the Civil Code, not the Criminal Code, and sentenced him to pay a fine equal to 100 times the minimum monthly wage (about US$ 600), but the provisions of the amnesty exempted him from having to pay.

74. The opposition Kyrgyz-language newspaper Asaba was also subjected to pressure and intimidation, allegedly as a tactic to punish its owner, an opposition candidate in the presidential elections. Journalists working for the newspaper were reportedly harassed and involved in suits for slander. The newspaper was declared bankrupt in April 2001, after losing a court case over repayment of a loan and being fined US$ 100,000 for libel of a member of parliament.

75. According to the information transmitted to the Special Representative, Vicherney Bishkek, a newspaper with a reputation for being independent and professional and with the largest circulation in the country, was also targeted for its criticism of government policies leading to violations of democratic rights and fundamental freedoms. It was reported that after a year of harassment of journalists and tax investigations, in 2000 the newspaper was forced to change its editorial leadership and direction. The paper, though still published, is considered to have lost its reputation for independence and professionalism.

76. The Special Representative learned that independent journalists in Osh and Jalal-Abad were also harassed for reporting human rights abuse, criticism of the electoral processes and lapses in democratic governance. Moldosaly Ibraimov, from Jalal-Abad, was charged on 19 June 2000 with libel for an article on corruption in the judiciary and jailed for five months. His conviction was quashed, but reinstated in 2001. The Special Representative was told about the arrest of Samagan Orozaliev, a free-lance television journalist from Jalal-Abad, in May 2001 on charges of extortion. It was alleged that he was found in possession of US$ 300 which he allegedly obtained by blackmailing a local politician and businessman. The journalist denied the allegations and claimed that the charges were levelled against him because of his intention to publish material critical of a member of the parliament. He also claimed that the police had acted against him in collusion with the same member of parliament, who was pressurizing the journalist to hand over the material and not to make it public. Mr. Orozaliev had been in prison for two months when he was taken to a hospital in Jalal-Abad with severe heart problems. At the time of the visit of the Special Representative he was still in detention.

77. The Special Representative was informed that restrictions on the media affected the rights of the Uzbek minority when the Government attempted to cancel the broadcasting licence of the independent Uzbek-language Osh Television. While the Government postponed this decision, a court in Osh ordered the station to change its frequencies. In 2001 this decision was overturned by the Supreme Arbitration Court on appeal by the station.

78. Furthermore, it was alleged that there was also an attempt at Internet censorship by closing down the independent news site Politica KG from August to 29 October 2000, the day of the presidential elections.

79. Through an administrative order of 5 April 2001, the Ministry of Justice required all media outlets to re-register and media activities without re-registration were prohibited. No new media were allowed to register until after October 2001.

80. According to the information received by the Special Representative, exemplifying the general trend towards tighter government control of the press, new customs regulations issued in September 1997 - resolution 320 - limit items that may be brought into Kyrgyzstan. Banned items include materials, including books and audio or video cassettes, "containing data that may damage the Republic's political or economic interests, its national security, public order, health protection and public morals". The instructions did not specify who would make decisions about the harmfulness of such materials. The potential for official abuse in such regulations, especially given the prevailing atmosphere of relations between the Government and the opposition press, is obvious.

Conclusions

81. Although in some cases it was difficult to come to any conclusions regarding the facts, the number of cases brought to the attention of the Special Representative indicate a pattern of harassment of the media and journalists with a view to controlling the freedom of expression, including the exposure of human rights abuses. Civil and criminal proceedings for defamation and libel, tax investigations, and threats of criminal prosecution for violating restrictions under laws on State secrets and the constitutional order have been frequently used to punish the press and journalists for their reports.

82. The Constitution provides adequate guarantees for freedom of expression and information, and protection of the press and mass media. However, it is evident that laws placing restrictions on these freedoms in the name of preserving the constitutional order, protecting State secrets and the dignity and honour of others, and preventing defamation of the judiciary have been used subjectively in a manner that seriously undermines the independence and freedom of the press.

83. Use of the libel laws raises even more serious concerns as they are clearly inhibiting the ability of the press to inform the public about actions of the Government that impair democratic development and violate human rights. The use of criminal processes for libel and slander as opposed to the civil remedy of damages has become the most publicized human rights problem in Kyrgyzstan. President Akayev himself has publicly called for the decriminalization of slander/libel. His proposal to amend the Criminal Code by removing libel as a criminal offence, however, was not supported by the parliament when the new Criminal Code was legislated. Furthermore, no safeguards have been placed in the law to ensure that the press and other media are able to impart information to the public or to voice fears or concerns regarding acts and omissions of the Government that may be arbitrary or violate human rights, without fear of prosecution.

84. However, regardless of whether slander is treated as a criminal or a civil transgression, a better balance is needed between protecting individuals from false accusations and protecting those who voice legitimate concerns about the actions or practices of public officials.

85. The Special Representative notes that there are very few professional associations of journalists. Three organizations about which she was informed were Internews, the Association of Journalists and the Osh-based Media Resource Centre, which helped some journalists through the litigation processes against them. There is clearly a need for stronger associations of journalists not only to lend support to actions for the protection of journalists, but also to undertake initiatives for enhancing the professionalism of journalists, putting special emphasis on objectivity and accuracy of reporting.

86. In a letter dated 16 August 2001 that the Special Representative received following her visit, Mr. Askar Aitmatov, Adviser to the President, informed the Special Representative that her concern regarding the case of Samagan Orozaliev had been brought to the attention of the relevant authorities, who would re-examine the case in order to determine the objectivity of the charges made against him. Mr. Aitmatov maintained, however, that according to official information available at that stage, the case was purely of a criminal nature and was not politically motivated.

87. Mr. Aitmatov also emphasized the importance that the President and Government of Kyrgyzstan attached to the freedom of the mass media. He informed the Special Representative of a bill submitted to the parliament by the President proposing the deletion of the sections of the Criminal Code on libel. It would also provide for the discontinuation of any pending prosecutions under this law. Responding to the concern regarding re-registration of the media, Mr. Aitmatov maintained that the process was being carried out in accordance with the law and was not being used to serve any political ends.

88. The Special Representative greatly appreciates the response to her concerns regarding the cases of journalists and human rights activists. She is encouraged by the Government's willingness to review some of the cases brought to its attention, as well as by its intention to improve the laws so as to mitigate their effect on freedom of expression. The Special Representative looks forward to the realization of the long-awaited abolition of the libel law.

B. Human rights organizations

89. The most publicized case of harassment of a human rights organization is that concerning the Kyrgyz Committee for Human Rights. The Special Representative was informed that registration of the organization, obtained in 1996, was cancelled at the end of September 1998 at the behest of the office of the General Procurator, alleging that the registration requirements had not been fully met. Cancellation of the registration came just before the referendum on a package of constitutional changes, including privatization of land, changes to the structure of parliament, a reduction in parliamentary immunity and the outlawing of censorship. It was seen as politically motivated and intended to prevent the organization from monitoring the referendum. There was also concern that the legal procedure governing such action had not been followed, as under the law a public association can only be barred from functioning by order of a court and not through an administrative order. The KCHR submitted documents for new

registration, but was informed in May 1999 that the Ministry of Justice had registered a public association of the same name but with a different chairman in April. This was contested by members of the original KCHR, and was generally seen as an attempt by the authorities to prevent a well-known human rights organization from legally carrying out its work. The KCHR finally gained re-registration in August 1999, following international protests and intervention by the Organization for Security and Cooperation in Europe (OSCE).

90. The Special Representative noted that this has, however, not stopped the persecution of its members. Even before the de-registration of the organization its members were reportedly harassed. Three activists from the regional branch of the KCHR were allegedly detained in Jalal-Abad on 23 September 1998. Albert Korgoldoev, the branch head, Tynybek Batyraliev and Abdunazar Mamatislamov were members of a committee that had sought permission to hold a peaceful demonstration against the referendum. The committee was still awaiting a decision by the local authorities when the three were reportedly arrested. Albert Korgoldoev and Tynybek Batyraliev were charged with violating public order for inviting the public to attend the demonstration. On the morning of 24 September 1998, the Jalal-Abad City Court sentenced them to 15 days' administrative detention. Apparently they had not been given access to a lawyer. They were released on 7 October 1998 but criminal proceedings were reportedly opened against Abdunazar Mamatislamov. He was released on 1 December after the court sent his case back for further investigation.

91. In July 2000, Ramazan Dyryldayev, the Chairman of the KCHR, was forced into exile after the Kyrgyz authorities issued a warrant for his arrest, detained his son for questioning and sealed the Committee's offices. Although the Procurator General allegedly ordered the criminal case to be suspended, the lawyer for the KCHR claimed that it was not safe for Ramazan Dyryldayev to return because the criminal investigation had not been officially stopped. The criminal charges related to a dispute with a former KCHR staff member over an unfair dismissal claim. Ramazan Dyryldayev continues to remain in self-exile, and claims that he expects further persecution if he returns to the country. At the same time another activist, Eleman Mambetaipov, was charged on 2 May 2000 under the Criminal Code for failing to secure property inventoried by the court and sentenced on 14 July 2000 to imprisonment for one year. The KCHR claims that the trial in this case was conducted in a manner that violated provisions of the Criminal Procedure Code.

92. In November 2000, a criminal case was opened against Albert Korgoldoev for hooliganism under the Criminal Code. The charge followed a complaint by a member of the Coalition of Non-Governmental and Non-Commercial Organizations (CNNO), Gulnara Mamatbekova, who reportedly accused Mr. Korgoldoev and four others of having assaulted and verbally abused her during the monitoring of the October presidential elections. Mr. Korgoldoev denied the charges and claimed that he was being punished for monitoring demonstrations in the Jalal-Abad region in October and November 2000 protesting the alleged falsification of the results of the presidential elections.

93. According to the information received, the CNNO was created at the initiative of the presidential administration and is not independent. Gulnara Mamatbekova, however, maintained in an interview with the Special Representative that her complaint against Mr. Korgoldoev was true and denied that it had been filed at the behest of the Government or any local authority. She

also refuted the allegation that the CNNO was sponsored by the Government. Nevertheless, Ms. Mamatbekova conceded that her allegations had not received the support of other organizations, including the women's organizations, nor had any statement been issued by any of these organizations in her favour after the alleged incident.

94. The Special Representative was informed that Albert Korgoldoev went into hiding and later secretly left Kyrgyzstan. He has since applied for refugee status in Austria. His brother, Eden Korgoldoev, who took over as KCHR coordinator in the Jalal-Abad region, was reportedly accused by the local authorities in Jalal-Abad, together with four other KCHR members, of "violating the established order for organizing and conducting gatherings, meetings, street processions and demonstrations" for having participated in a peaceful demonstration on 1 May 2001. They were tried by a Jalal-Abad Court and, upon conviction, ordered to pay large fines.

95. It was further alleged that on 27 June 2001 the KCHR office in Osh was sealed by the Osh branch of the MNS. Noomagan Arkabaev, a lawyer and the KCHR coordinator for the Osh region, was detained on 20 June 2001 by officers of the MNS. During the search of the KCHR office MNS officers allegedly discovered leaflets on the basis of which he was arrested on charges of disseminating material calling for the overthrow of the constitutional Government. It was alleged that the leaflets were planted by the MNS and that the real reason for the arrest of Noomagan Arkabaev is the fact that he had prepared articles for publication accusing the director of the MNS of Osh region of corruption. He was released from custody on 18 July, after having spent two weeks on a hunger strike.

96. In an interview with the Special Representative, Mr. Arkabaev and his lawyer, Mr. Mamudov, showed documents that strongly indicated his innocence. Mr. Aitmatov had mentioned in his letter that this case had also been referred to the relevant authorities for re-examination. The Special Representative was pleased to learn from the State Secretary, Mr. Ibraimov, by letter dated 24 August 2001, that the judicial investigation against Mr. Arkabaev was closed. She was further informed that the MNS has dropped the charges against Mr. Arkabaev.

97. Another member of the KCHR from Jalal-Abad, Abdymamate Kadyrbekov, was reportedly detained by the traffic police the day after he took part in a rally on 1 May 2001. He was taken by force to the local office of the MNS where he was beaten and tortured before being released. On 17 September 2001, Abdymamat Kadyrbekov received a three-year suspended prison sentence on charges of "hooliganism". On 7 October 2001, according to the information received, masked men burst into Mr. Kadyrbekov's house and caused him severe injuries, warning him not to file a complaint about his sentence.

98. It was also alleged that Bolot Tynaliev, a member of the KCHR, was threatened with a knife by five men on 27 January 2001. The men reportedly stole his KCHR files and warned him to stop his human rights work.

99. The attention of the Special Representative was drawn on the case of Topchubek Turgunaliev, former rector of the Humanitarian University in Bishkek, founder of the independent human rights organization Guild of Prisoners of Conscience and leader of the

opposition party Erkindik (Liberty), who was charged in 1996 with "defaming" and "insulting" the President of Kyrgyzstan. He was found guilty and received a one-year suspended prison sentence and was released from the courtroom. In January 1997 he was charged with offences relating to alleged irregularities committed while he was rector of the Humanitarian University. He was initially sentenced to 10 years' imprisonment, but on appeal his conviction was upheld only for the charge of abuse of authority and the sentence was reduced to four years. After serving eight months in the remote Arka penitentiary in Osh region, Topchubek Turgunaliev was allowed to return to Bishkek and serve the remainder of his sentence in an open prison. In May 1998 the Supreme Court reduced his sentence to three years. He was allowed to live at home and to receive appropriate medical treatment.

100. On 1 September 2000, Topchubek Turgunaliev was sentenced to 16 years' imprisonment with confiscation of property. He was convicted and sentenced on charges that he intended to make an attempt on the President's life in 1999 together with seven other people. Topchubek Turgunaliev has consistently denied the charges and it was alleged that the case against him was fabricated by the MNS in order to punish him for his peaceful political activities and criticism of the Government's suppression of fundamental freedoms. Three MNS officers reportedly admitted in court that there was not enough evidence to support the allegations. The charges were based on the testimony of one of the co-accused, Timur Stamkulov, who later confessed in an open letter that he had carried out MNS instructions to organize a group of men and plan a fictitious assassination attempt in order to implicate Topchubek Turgunaliev. In court Timur Stamkulov reportedly retracted this confession. He was sentenced to four years' imprisonment, but was amnestied and released from the courtroom.

101. National human rights organizations, the media in Kyrgyzstan and international human rights groups have all held that the charges against Mr. Turgunaliev were politically motivated. It is apparent from the accounts received by the Special Representative that Mr. Turgunaliev is generally respected as an academic and for his leadership in the Movement for Deliverance from Poverty in Kyrgyzstan. Amnesty International recognized him as a prisoner of conscience throughout the period of his detention. Views that his activities with respect to the exercise of his democratic freedoms and support for the protection of human rights and fundamental freedoms have led to his being persecuted by the Government inspire credibility. The Special Representative sought the permission of the Government to see Mr. Turgunaliev while she was in Bishkek. She regrets that the Government did not reply to her request, thereby not allowing her access to him.

102. In the letter mentioned earlier, Askar Aitmatov regretted that bureaucratic delays in the Ministry of Justice had prevented a timely decision on this issue. In the same letter the Special Representative was informed that the President was examining the requests received from a number of NGOs and political parties for a pardon for Mr. Turgunaliev. The Special Representative is happy to report that Topchubek Turgunaliev was released on 20 August 2001, after receiving a presidential pardon by decree of the same date. This news was brought to the Special Representative's attention by the State Secretary, Mr. Ibraimov, and the Permanent Mission of Kyrgyzstan in Geneva in their letters sent on 22 and 24 August 2001 respectively. The Special Representative welcomes the release of Mr. Turgunaliev and considers it to be a positive step towards assuaging concerns regarding the Government's performance in the area of human rights.

103. Some other cases were brought to the attention of the Special Representative. Edgar Parpiev, a member of the Jalal-Abad regional human rights organization Justice, received 15 days' administrative arrest in connection with the preparation of a demonstration in September 1998 which reportedly went ahead peacefully on 25 September.

104. It was further reported that Nadejda Nikolaevna Maslovets, a witness in a case of a 1998 alleged extrajudicial killing by a member of a law enforcement agency, was first threatened with physical violence and then offered money in order to stop her from assisting the investigation into the killing. The threats reportedly continued for over two years becoming weekly after the trial opened in January 2000. Unidentified persons allegedly came repeatedly to the house of the witness in a car without a registration number and with shaded windows. It is alleged that the car was seen at the Department of Interior Affairs of District Leninsky of Bishkek (Lenin ROVD), the Department to which the accused official belonged. On one occasion, the witness was physically hit by these persons and sustained injuries serious enough to warrant medical treatment. Despite these repeated attempts to intimidate her being brought to the attention of the police, she reportedly received no protection.

105. In addition, it was alleged that Tolekan Ismailova, the leader of the Coalition of NGOs for Democracy and Civil Society, has suffered continued harassment. On 13 March 2001 she was reportedly attacked by an unknown assailant as she left her home. She was hit over the head and lost consciousness. Human rights sources allege that she has been deliberately targeted by authorities to frighten her into stopping her activities to promote human rights. No one has yet been arrested or prosecuted for this incident. Since the Coalition was active in the monitoring of the presidential elections, it was alleged that their protests over their exclusion from polling places and against serious irregularities in the conduct of the elections is the reason for the Government's harassment of the organizations participating in the Coalition. In June 2000, the Ministry of Justice stated that since the Coalition was not registered as a public association it could not receive foreign funds to support its activities, nor could it assess political developments in the country. Although no action was taken against the Coalition, threats and intimidation against it reportedly continued.

106. The Special Representative was informed that in June 2000 the State television broadcast a programme discrediting the Public Association of Social Protection of the Population and damaging its professional reputation. The organization works for the social rights of people and has been actively protesting against the plight of pensioners.

C. Youth groups

107. It has been brought to the Special Representative's attention that a group of students from the American University in Bishkek who had formed an Amnesty International group applied for registration with the Ministry of Justice in September 1999. They were refused registration reportedly on the ground that an organization with the word "Amnesty" in its name could not be registered as amnesty was a prerogative of the deputies of the parliament. Another objection was to the word "international" being used by an organization seeking registration nationally. The term "prisoners of conscience" used in the objectives of the organization was cited as a reason for denying registration on the ground that as Kyrgyz law did not allow discrimination because of political beliefs, there were no political prisoners in the country.

108. It was reported that the group was not allowed to take public action in their campaign against torture under an administrative order banning public demonstrations in Bishkek without prior permission and at specific locations fixed by the administration. Only registered bodies can apply for this permission.

109. It was reported that the American University in Bishkek offered a liberal environment for student activities for human rights. However, it was reported that other universities generally discouraged students from such activities. The Special Representative received reports that students from the Humanitarian University were warned against attending public meetings on democratic rights or fundamental freedoms. Students who had distributed material on freedom of expression were threatened with expulsion. The Youth Parliament, allegedly a pro-Government student union, called for a "social boycott" of students who indulged in any political activity. It is claimed that there is a tendency to term any activity for the protection of rights or to protest against violations of fundamental freedoms as political. These reports are at variance with the claim of the dean of the university that students enjoyed complete freedom.

110. However, it was encouraging to note that some of the institutions of higher education did allow students a degree of freedom to carry out activities for the promotion and protection of human rights. University students had initiated a project on human rights education in schools that had evoked interest among the students. The Special Representative was told that the Minister of Education supported this programme.

111. According to information received, a section of the press had disparaged and ridiculed the human rights activities of the Youth Human Rights Group (YHRG) based in Bishkek and those of other youth groups and the students' movement in general. The newspaper Vicherney Bishkek published an article in July 2001 accusing the YHRG of acting on the "orders" of foreign donors in carrying out their activities. One of the activities mentioned in this article was an event held by the YHRG and other organizations in connection with the all-European week against racism in March 1999. The other was signing a petition for public hearings in Felix Kulov's case. It is interesting to note that before December 2000 the same paper had been encouraging the activities of the YHRG and had published advertisements for their legal aid centre for children free of cost. The change in the paper's policy seemed to coincide with its change of management, allegedly under pressure from the Government.

D. Environmental activists

112. Some of the critical environmental issues pertain to the dumping of nuclear waste. According to information from environmental groups in the country there are numerous such dumps in the mountains. Recent floods have endangered these dumps and environmental damage is feared. No measures are being taken by the Government to secure the environment because of lack of funds. The Government is very sensitive about disclosures of environmental damage, and has allegedly retaliated against those who have exposed some of the issues.

113. *One environmental expert who investigated an accident involving cyanide pollution of* water in 1998 was dismissed from her job at the International University allegedly because of her report, which was published by Vicherney Bishkek. She is since working with the NGO Tree of Life. She complained that the Government had started a campaign to discredit her findings and

attacked her professional reputation. She was also attacked by the government press and media for an interview she gave on mining issues that was published in a newspaper. She alleged that mining companies, including those managed by foreign concerns, were protected by the Government against scrutiny by NGOs, which were not allowed access to monitor compliance with environmental safety standards by these companies.

E. Conclusions

114. In the early years after independence Kyrgyzstan demonstrated a stronger commitment to the promotion and protection of human rights. According to information given to the Special Representative there are more than 2,000 registered public associations. Several human rights organizations are actively working in the areas of civil and political rights as well as economic, social and cultural rights. However, recent years have seen a deterioration in the situation of human rights, and human rights defenders have come under severe pressure. The crisis of democracy has raised the potential for human rights abuse, making legislative protections ineffective and meaningless.

115. From the accounts heard by the Special Representative, it is apparent that despite legal recognition of human rights and fundamental freedoms, activities for the promotion and protection of these rights have been severely repressed by the Government. The relationship between the Government and the civil society has become particularly strained because of the pro-democracy activities of human rights defenders, and their strong criticism of the oppressive tendencies of the Government towards any voices of opposition to its policies. Some initiatives were taken to open a dialogue between civil society groups and the Government. However, an environment of mutual mistrust prevails and has prevented better progress in improving relations between the Government and the civil society.

116. The growing influence of civil society organizations on public opinion is seen as a threat by the Government and the credibility of these organizations has been attacked by different methods. Although governmental authorities in general recognized the legitimacy of the work of human rights NGOs, the Special Representative noticed that some important officials in the Government denigrated human rights defenders, assigning them ulterior motives for the work that they do. While the Government itself is eager to establish international cooperation, any relationship, financial or otherwise, that the NGOs have developed with the international community is viewed with suspicion.

117. Some human rights organizations complained that, at times, partnerships entered into by international agencies to implement projects have, inadvertently, harmed the work of human rights groups. The example given was the financial assistance provided by UNDP to a local NGO for monitoring the parliamentary and presidential elections in 2000. It was alleged that the organization is known for its close links to the Government. Results published by this organization favoured the Government, and were used to discredit the findings of independent monitors from amongst the human rights community. It was also alleged that the funds provided for election monitoring were used for creating pro-government organizations. No concrete evidence, however, was furnished to substantiate these complaints.

118. The freedom of human rights defenders has been curtailed by violating their right to life, personal security, liberty, privacy, integrity and reputation. While constitutional and legal provisions regarding human rights and fundamental freedoms have failed to protect the defenders, laws on national security, libel and defamation have been extensively used to punish them for their activities in the defence of human rights. Groups and individuals working in almost every field of human rights have experienced some degree of harassment. In some cases human rights defenders have had to leave the country because of harassment that has continued for many years.

119. The Government has created bodies to advise it on human rights policies and laws. A Commission on Human Rights established by a presidential decree in 1997 acts as an advisory body to the President. A Parliamentary Committee on Human Rights and another on Education, Women, the Family and Youth work within the legislature. A State Commission on Family and Women and another on Minors have been appointed. While no specific mechanism exists for the protection of human rights defenders, a special unit within the Office of the General Procurator has been set up to investigate cases of human rights violations. It is a matter of concern to the Special Representative that the existence of this unit is not generally known, and none of the cases pertaining to the abuse of human rights defenders was investigated by this unit. One human rights organization complained that the Office of the General Procurator does not release any information with regard to cases of violations investigated by it. A request by this organization for information on the number of cases of violations committed by law enforcement and security services was turned down on the ground that this was official record which could not be released.

1. Freedom of association

120. Although laws on public associations have been amended to provide better protection for freedom of association in the case of NGOs, some provisions continue to exist that have the potential to be misused. In particular, the requirement of registration is allowing the Government a degree of control that undermines the freedom of association. While registration may be a justified requirement for gaining the status of a legal entity, the prohibition of collective public activity without registration is an undue restriction.

121. Amendments proposed to the 1999 Law on Non-Commercial Organizations and the Criminal Code raise further apprehensions. The Ministry of Justice will receive significant authority to interfere in the activities of public associations, by virtue of the power to check whether their activities are compatible with their objectives and to issue "warnings" to them. Subjective interpretations by State organs of any criticism of Government could be penalized as undermining or weakening the constitutional system. This could seriously jeopardize the advocacy activity of human rights defenders. NGOs receiving foreign funds or other "material means" could become liable to more severe penalties. In Kyrgyzstan there have already been cases of arrests of people carrying flyers against the President.

122. Proposed laws for regulating the activities of political parties and religious groups place conditions that are too stringent for the free functioning of these organizations. In this case as well, the intention seems to be to impose control by the authorities in a manner that could impair

the ability of these organizations to function with independence. Of particular concern is the possibility under the proposed amendments that unregistered political parties could be legally considered as criminal groups.

123. There is a need to review the proposed amendments in light of the apprehensions arising from many of the provisions.

124. Restrictions have also been placed on the freedom of association of human rights groups. In April 2000 Zamira Sydykova, Yrysbek Omurzakov and Topchubek Turgunaliev as well as other Kyrgyz human rights activists founded the Guild of Prisoners of Conscience, a new independent human rights organization, and applied for registration with the Ministry of Justice. On 4 May the Ministry reportedly returned the application saying that it was unable to register the organization because its charter was not wholly compatible with the Law on Non-Governmental Organizations. The Guild of Prisoners of Conscience resubmitted an amended registration application, but was again allegedly refused registration on 23 May. The Ministry of Justice explained its refusal on the grounds that the Constitution of Kyrgyzstan prohibited discrimination against anyone on the basis of their political views and the current Criminal Code did not contain any provisions for political crimes. As Kyrgyzstan had no political prisoners, an organization created to defend the rights of prisoners of conscience could not be registered.

125. Several human rights groups alleged that the Government was sponsoring the creation of pro-government NGOs in a bid to undermine the work of independent NGOs and their coalitions. It was alleged that an association of NGOs was being created by the Government and local authorities were pressuring independent NGOs to affiliate with this association. According to the information received, smaller organizations with no independent sources of funding have become more vulnerable to this pressure.

2. Freedom of assembly

126. Despite constitutional guarantees, freedom of assembly is severely restrained in Kyrgyzstan. Administrative resolutions and decrees have allegedly been used to declare even peaceful assemblies unlawful and, therefore, punishable under the Criminal Code. It was reported that no demonstrations or public protest can be carried out without written permission from the authorities. There are no appeal procedures provided by the law in the case of denial of permission. Restrictions on the number of places at which demonstrations or rallies can be held have also resulted in denial of the right to assemble peacefully. It was alleged that the police have on numerous occasions used excessive force to disperse peaceful demonstrators protesting against the violation of their rights and freedoms. Several human rights defenders, including pro-democracy activists, journalists, lawyers and leaders of citizens' action groups, have been beaten, arrested and prosecuted on charges of participating in or organizing an unlawful assembly.

127. The Special Representative was informed of the arrest in July 1998 of 47 peaceful demonstrators who were protesting the delay in its distribution by the Government of plots of land. In August 1999, the NGO Coalition was denied permission to hold a meeting to discuss

the Electoral Code proposed by the Government. Members of parliament who were touring the country on a public contact campaign were fined under the administrative law for holding unsanctioned meetings.

128. In March 2000 law enforcement officers reportedly used excessive force to break up peaceful demonstrations in several regions of the country protesting irregularities in the 20 February and 12 March rounds of parliamentary elections. Hundreds of demonstrators were reportedly detained and beaten during demonstrations in different parts of the country.

129. It was also alleged that on 30 March 2001 Alexander Kutsev of Ar-Namys, an opposition political party, received an administrative penalty of five days' imprisonment for holding a picket sign and calling for President Akayev to retire.

130. Over 1,000 demonstrators were reportedly prevented from gathering in Bishkek's main square for the May Day rally in 2001. It is reported that nine opposition parties had called for the rally to be dedicated to freedom of expression and democracy. An application seeking permission had been submitted to the office of the mayor of Bishkek almost 20 days before the event.

131. The Public Association of Social Protection of the Population held peaceful picket lines protesting against low pensions and high electricity rates. Despite having the required permission for holding the assembly, Lidiya Fomova, leader of the organization, was reportedly issued a written warning by a regional prosecutor in Bishkek against holding any unwarranted meetings. It was alleged that she was subjected to threats by law enforcement officials. Authorities also visited the offices of the organization and checked their records, without giving any reasons for the inquiry.

3. Other concerns

(a) Independence of the judiciary

132. The judiciary has a critical role in the protection of human rights defenders, particularly when criminal prosecution and civil litigation is the method of harassment used against them. The judiciary can only play an effective role in this respect if it maintains its independence from the influence of the executive, and is above any suspicion of corruption. The Special Representative was informed that the Government has in numerous instances been able to use judicial proceedings to harass political and human rights activists and journalists. This raises deep concern with regard to the independence of the judiciary. There is a general impression that executive domination of the judiciary has limited the right of citizens to due process. The circumstances under which some human rights defenders, in particular, have been convicted and sentenced by the courts give credibility to allegations that interference of the executive affected verdicts in many of these cases.

133. There is little or no faith in the capacity of the judicial system to dispense justice. Courts are widely perceived as an arm of the Government and not as protectors of citizens' rights. Allegations of corruption have further undermined respect for the judiciary. Judges of the

subordinate courts, in particular, are poorly paid. Judges do not hold positions for life. Judges of the Constitutional Court are appointed for 15 years and those of the local courts for a first term of 3 years. While the Constitution grants the parliament the power to approve candidates to the higher judiciary nominated by the President, it is generally believed that judicial appointments are effected without the full and free participation of the legislature.

(b) Rights of ethnic minorities

134. Kyrgyzstan's ethnic composition creates a set of problems that affects various aspects of the human rights situation in the country. The country's legal and political systems clearly favour the Kyrgyz majority. Although article 5 of the Constitution of 1993 guarantees the preservation, equality, and free development and functioning of Russian and other languages used by the population, Kyrgyz is designated the official language. Russians and Russian speakers have complained about discrimination, and many have emigrated. President Akayev has in the past vetoed laws that would have given priority to Kyrgyz people in rights over land and housing and extended the deadline for compulsory use of the Kyrgyz language. He is also known to have urged the parliament to pass a law on the rights of national minorities which would give them the right to representation in the parliament and in local organs of self-government. Steps taken to preserve the rights of the Russian-speaking population, including a treaty with the Russian Federation to facilitate the acquiring of Russian citizenship and residence by Kyrgyz citizens if they leave, has reassured the Russian-speaking population to some extent.

135. However, the ethnic tensions between the Kyrgyz and the Uzbek population concentrated in the south remain a cause for concern both for the Government and for minority rights groups. More than half of the country's population resides in the south. Regardless of ethnicity, there are complaints of denial of political representation, equal access to economic resources, government subsidies and jobs. The appointment of northerners as governors of the southern provinces is a further cause of resentment. Some sources report that, as a deliberate policy of the Government, refugees are settled in areas with an Uzbek majority to change the ethnic balance of these areas.

136. To soothe these manifold sources of friction, Russian, Uzbek and Kyrgyz are all languages of instruction at the Osh State University as well as in the general education schools in Osh city. Independent media in the Uzbek language include the Osh Television Station and newspapers such as Mizon. Other measures taken include the creation of the Assembly of Nationalities, an overarching organization uniting representatives of ethnic groups who have established cultural centres. Nevertheless, the Assembly is only a consultative organ. Its potential for influencing State policy and addressing critical nationality concerns is limited.

137. Despite measures taken to manage ethnic tension, there is a degree of resentment amongst the Uzbek population, particularly in the south. Expressions of concern, and warnings that ethnic discrimination and the hegemony of the north could create secessionist tendencies, were met with warnings that strict measures would be taken to deal with anti-constitutional and seditious expressions.

138. It has been generally observed that key positions in the judiciary are held by ethnic Kyrgyz. Lawyers, in particular, have charged the judiciary with bias against other groups. Although there is little evidence of systematic discrimination, allegations that it exists are credible in some cases.

139. One particular minority group that has complained of persecution is the predominantly Muslim Uighurs. They are the largest indigenous group living in the Xinjiang Uighur Autonomous Region in north-west China. Groups of Uighurs have fled persecution in China and have settled in various parts of Central Asia. According to official statistics, there is a population of 50,000 Uighurs in Kyrgyzstan. In November 1992 the Uighurs tried to form a party calling for establishment of an independent Uighur State, including the Chinese-controlled Uighur territory. The Ministry of Justice denied the group legal recognition.

140. It was alleged that the Uighurs are being discriminated against as Kyrgyzstan has committed itself not to extradite people who face the death penalty. Nevertheless, Kyrgyzstan has deported several Uighurs, allegedly under pressure by China. At least three of the people deported were executed by Chinese authorities. The issue of deportations has caused resentment amongst the population. Nigmat Bazakov, leader of the Uighur community in Kyrgyzstan, was killed in 2000. The authorities claimed that he was killed by Uighur extremists, but no one was identified or prosecuted for this crime.

141. It was also reported that political repression of the community on the basis of their ethnic origin was not an issue. Most of their problems stemmed from lack of economic opportunities and social bias. Access to higher education and employment in the public service for Uighurs were restricted. This has resulted in many Uighurs registering themselves as other nationalities.

142. More recently, however, the Uighur community has come under State surveillance because of the rise in the activities of banned Islamic extremist groups. Uighurs are increasingly being accused of sympathizing with these groups, and some members of the community have become targets of persecution by the authorities.

143. While there are some concerns regarding the rights of minorities and stronger safeguards are needed for their protection, no systematic persecution or discrimination against the minority communities is evident in State conduct. The group of Uighurs who met with the Special Representative stated that they have the freedom to exercise their right to organize, and have been allowed to hold public activities for the defence of their human rights. On 10 December 2000, they set up a picket line in front of the Chinese embassy in Bishkek, protesting against the treatment of Uighurs in China. The Special Representative was informed that a bill on the protection of the rights of national minorities is pending in the parliament. However, she has no information on the rights protected by the proposed law.

(c) Religious tolerance

144. The population of Kyrgyzstan is predominantly Muslim (75 per cent). However, interest in religion is much stronger in the south amongst the Uzbek Muslims who constitute 13 per cent of the total population. Twenty per cent of the population profess the Russian Orthodox faith.

The Constitution provides for a secular State and does not allow the intrusion of any ideology or religion in the conduct of State affairs. Article 16.2 guarantees freedom of religion and worship. Religious organizations are permitted to function, subject to some restrictive requirements of registration.

145. There is no evidence that the Government promotes the interest of any one religion over others. While the teaching of religion or atheism in public schools is forbidden, there is no apparent interference in the practice of religion by any of the religious communities. Followers of all religions have been able to construct their own places of worship. In the case of Muslims, there has been a sharp increase in the number of mosques in the country since independence. According to one estimate there are about 2,000 mosques in southern Kyrgyzstan. There are many places of worship for different denominations of Christians. Missionary groups operate freely in the country. Except for some unconfirmed reports of tensions between followers of conservative Islam and foreign missionaries in rural areas, there are no serious issues of inter-communal tensions.

146. In 1996 the Government established a State Commission on Religious Affairs (SCRA). Officially, the Commission is meant to promote religious tolerance, protect freedom of conscience and oversee the implementation of laws on religion. According to a 1997 presidential decree all religious organizations must register with SCRA before they can apply to the Ministry of Justice for registration as a legal entity. A muftiat (directorate for managing the spiritual affairs of Muslims) functions as the State organ on religion.

147. In more recent years, however, activities of Islamic extremists in the region and their attempts to spread their influence in Kyrgyzstan have raised Government's concerns about political extremism in the guise of conservative Islam.

148. The Government's anxiety in this respect has manifested itself through measures that have resulted in action by the security forces targeting religious groups like the Hizb-ut-Tahrir, and also individuals demonstrating any tendencies to follow radical religious teachings, generally known as Wahabism. The Hizb-ut-Tahrir is an unarmed religious extremist group that has been banned in Kyrgyzstan and many of its activists have been arrested. The Ferghana Valley has been particularly targeted by the Islamic Movement of Uzbekistan (IMU), an armed extremist group based in Uzbekistan. Both the IMU and Hizb-ut-Tahrir aggressively promote the establishment of a caliphate or an Islamic State in the Central Asian region.

149. The muftiat, in particular, has reacted strongly against the spread of fundamentalist Islam in a manner that has led to illegal actions against religious activists and harassment by State authorities of relatives of suspected members of Islamic opposition groups and members of unregistered congregations, both Muslim and Christian. The muftiat and the National Security Ministry have established special bodies to monitor radical Islamic activities in the Osh and Jalal-Abad regions. This has not only exacerbated north-south tensions, but has led at times to the persecution of other sects of Islam that do not share the Sunni belief of the majority of Muslims and to which the muftiat strongly adheres. Human rights defenders voicing concerns over illegal actions of State authorities, or defending the right of religious activists to be dealt with in accordance with the law, have also suffered harassment and intimidation at the hands of security agencies.

150. It may be concluded from the circumstances observed by the Special Representative that the fundamental policy of the Government of Kyrgyzstan is to create an environment as close to secularism as practicable. It can be said that the Government's primary goal is to promote inter-religious and inter-communal tolerance and harmony. It is, however, clear that activities of radical Muslim groups is a matter of deep concern for the Government. The Government continues to deal with this as a security issue. It is feared that such an approach creates political tensions and brings the Government's policy of religious tolerance into question. More significantly, this has allowed elements with power and control over religious institutions created by the State, such as the muftiat, to use religion as a means of imposing political authority over the populace. This would present a new and different challenge to the Government.

151. In this context, the situation emerging after 11 September 2001 could have serious implications for the protection of human rights defenders. Governments in the region are already using these situations as a justification for their repression of dissent and deviations from established human rights norms. Attempts by human rights defenders to save these norms from being eroded are already resulting in their being labelled "terrorists" or "supporters of terrorists". If this trend is not reversed, the situation of defenders in Kyrgyzstan, and in the region as a whole, could become of serious concern.

(d) Women human rights defenders

152. The Special Representative notes that a significant number of human rights defenders at risk are women. These include journalists, human rights activists, environmental activists and leaders of movements for social rights. This indicates a high rate of women's participation in activities for the protection and promotion of human rights. The Special Representative was told that almost 250 NGOs work on issues of women's rights, and that the community of women's rights advocates is becoming increasingly organized.

153. Although they play an important role in public affairs, a reassertion of traditional attitudes towards women has resulted in practices that violate women's human rights. The Special Representative has been told that the old practice of bride kidnapping has re-emerged recently and forced marriages of under-age girls have become more common. Authorities often ignore these incidents and existing legislation has seldom been implemented to deter such practices. Cultural traditions and social structures that lack sensitivity to women's rights seem to discourage victims from seeking redress for these violations. Trafficking of women for use in prostitution is a persistent problem. Absence of reliable information on trafficking and other instances of violence against women is a major factor in the lack of effective strategies to combat these problems. Complicity of State officials is indicated by a report that several police officials were charged with issuing passports to abet the trafficking of persons.

154. Women continue to suffer discrimination in respect of their social rights. Unemployment amongst women is higher than men; they earn a lower average wage than men do and are grossly under-represented in Government and politics. The new Criminal Code, in force since 1998, decriminalized homosexual acts between consenting adult men. Lesbianism is, however, still an offence under the Criminal Code. This indicates stronger prejudice against women's sexual rights.

155. Women's rights activities have not generally been restricted by the State. However, in its concluding observations and comments on the report submitted by Kyrgyzstan, the Committee on Economic Social and Cultural Rights expressed concern regarding repressive measures against female journalists for their protest against inequality between men and women (see E/C.12/1/Add.49). The Special Representative was informed that some women's human rights defenders have been threatened by non-State entities, especially conservative religious elements, for their advocacy of women's rights. In such cases they did not receive adequate protection from the State.

IV. CONCLUDING OBSERVATIONS

156. The Special Representative welcomes the expressed commitment of the Government of Kyrgyzstan to democracy, the rule of law and human rights. She notes that the Constitution of Kyrgyzstan provides a sound legal framework for the implementation of human rights and fundamental freedoms and for conducting activities for the promotion, protection and effective realization of these rights. Kyrgyzstan has a good record of ratifying international human rights conventions, and which are automatically incorporated into domestic law. The Special Representative notes, however, that there is continuous legislative activity with a view to changing laws, not always to the benefit of human rights. Many of the restrictions on fundamental freedoms imposed by laws have diluted the strength of constitutional guarantees, adversely affecting the enjoyment of these rights and freedoms in practice.

157. The Special Representative observes that Kyrgyzstan is undergoing a difficult period of rapid political and economic change, and is encountering many challenges similar to those confronting other countries in transition to democratic rule and a market economy. The Special Representative wishes to recall that democracy and the rule of law are essential for the fundamental well-being of Kyrgyzstan. In this context, she wishes to emphasize the crucial role played by the civil society and human rights defenders in general in the consolidation of democracy and respect for human rights.

158. The Special Representative notes with concern that an environment of mistrust between the Government and the civil society prevails, despite some initiatives taken to open a dialogue. Although governmental authorities in general recognize the legitimacy of the work of human rights NGOs, the Special Representative can state that the growing influence of civil society organizations on public opinion is seen as a threat by the Government.

159. The right to participate in the government of the country and conduct of public affairs is exercised under a great deal of strain. Government's tolerance of criticism of its policies and conduct that violate human rights has diminished over the years. It is important for the State to recognize the importance of the civil society and its essential role in Kyrgyzstan's transition to democracy.

160. The Special Representative remains concerned that the right to protest human rights violations has been repressed and is one of the major causes of the strained relationship between the Government and human rights activists. Freedom of assembly and freedom of association, though guaranteed by the Constitution, are frequently violated in practice. Unwarranted

restrictions are placed on these rights by administrative regulations and measures. Laws on national security and preservation of the constitutional order have been used to penalize the exercise of these rights. However, the freedom to communicate with non-governmental or intergovernmental organizations has generally not been obstructed.

161. The Special Representative expresses her distress over the fact that the freedom of human rights defenders has been curtailed by violations of their rights to life, personal security, liberty, privacy, integrity and reputation. Groups and individuals working in almost every field of human rights have experienced some degree of harassment. While constitutional and legal provisions regarding human rights and fundamental freedoms have failed to protect human rights defenders, laws on national security, libel and defamation have been extensively used to punish them for their activities in defence of human rights.

162. The ability of human rights defenders, and the people in general, to freely publish, impart or disseminate to others views on human rights and to draw the attention of the public to issues of concern is severely hampered because of the policy of restraint adopted by the Government. People's right to information has yet to be fully respected.

163. The Constitution makes mandatory the publication of all laws before they are passed by parliament. This provision is given effect to and has helped to promote understanding of laws as well as issues relevant to the protection of human rights. Civil society organizations do engage in public debates on national laws. The Special Representative is convinced that the media can have an important role in creating public awareness of human rights if they are allowed the freedom necessary to fulfil this responsibility.

164. The Special Representative is concerned at the lack of freedom of expression and the press in Kyrgyzstan. The numerous cases brought to her attention indicate a pattern of harassment of the media and journalists aimed at controlling freedom of expression, including the exposure of human rights abuses. The right to carry out professional activities has been denied by imposing penalties that are clearly intended to prevent journalists from carrying out their professional duties. The use of civil and criminal proceedings for defamation and libel inhibit the ability of the press to inform the public about actions of the Government that impair democratic development and violate human rights.

165. Although the law provides for remedy in cases of violation of human rights, lack of confidence in the independence and impartiality of judicial or other authorities has discouraged any action for seeking such remedies. The Government has established mechanisms to receive complaints of human rights violations by public authorities and law enforcement officials. However, there is no public confidence in the ability of these mechanisms to provide relief or even-handed justice.

166. While laws restricting NGOs' access to resources for their human right activity have not yet been imposed, proposals for changes in the law could bring the financial affairs of NGOs under greater scrutiny and lead to possible harassment of NGOs. The Government-owned media have attempted to portray foreign funding in a negative light and to undermine the integrity and credibility of NGOs.

167. The Special Representative noted with appreciation that the Government has taken some initiatives on human rights education. However, these are limited in their outreach.

168. The Special Representative welcomes the progress made in establishing national human rights institutions. She hopes that the draft law for the creation of an Ombudsman will be adopted soon by parliament and in accordance with the Paris Principles on national human rights institutions. In this regard, the provisions for political and financial independence are of paramount importance to the success of such an institution.

169. Finally, the Special Representative is convinced that despite the Government's having stepped back from its commitment to democratic governance and protection of human rights in recent years, the possibility of renewing that commitment is not remote.

V. RECOMMENDATIONS

170. On the basis of the observations and concerns set out in the previous section, the Special Representative would like to offer the following recommendations for consideration by the Government. In view of the open and constructive exchanges of views that took place during her visit, the Special Representative is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of human rights, and in particular the rights of human rights defenders.

171. The Special Representative urges the Government to review restrictions imposed by laws and regulations on the freedoms of assembly, association and expression and to bring them into conformity with the spirit of the Constitution and the obligations of Kyrgyzstan under international human rights law. The laws on libel and defamation should, in particular, be reformed to eliminate the possibility of such laws being applied to curb the freedom of the press.

172. The Special Representative strongly urges the Government of Kyrgyzstan to ensure that the legislative reforms under consideration reinforce guarantees for the protection of human rights and provide for the establishment of effective mechanisms for their implementation. Specific provision in the mandate of the Ombudsman for protection of human rights defenders should be seriously considered.

173. In order to improve the environment for the work of human rights defenders, a dialogue between the Government and civil society should be initiated and measures should be taken to build mutual trust and respect. A positive step in this direction would be the withdrawal of cases against human rights defenders.

174. The Special Representative strongly urges the Government to investigate violations committed against human rights defenders and to bring the responsible parties to justice. Complaints of harassment of human rights defenders must receive a prompt response and adequate measures for their safety should be taken. In this regard, the Special Representative urges the special unit within the Office of the General Procurator to investigate cases of abuse of human rights defenders committed by law enforcement and security services and to make the

results of the investigation known. Public officials found to be responsible for such actions should be prosecuted in order that the growing tendency of these officials to intimidate human rights defenders may be effectively deterred.

175. The Special Representative urges the Government to respect the right of citizens to hold peaceful demonstrations and assemblies and to adhere to international standards on the use of force against demonstrators.

176. It is recommended that the Government strengthen its institutions; this should be a priority on the agenda of reform. Steps for building public confidence in the independence of the judiciary are critical for the legislative framework in order to make a positive impact on the situation of human rights in the country, and to provide better protection to human rights defenders.

177. The training of persons involved in the administration of justice as well as training of government officials could improve the judicial and administrative systems. The Special Representative encourages the Government to undertake such training, which can also be a part of technical cooperation sought through the Office of the High Commissioner for Human Rights.

178. Finally, the Special Representative urges the Government to adopt appropriate measures to disseminate widely and ensure full observance of the Declaration on Human Rights Defenders. The Declaration, as well as all other human rights standards, should in particular be made available to schools and institutions of higher education. Students and academics should be encouraged to undertake human rights projects.

Appendix

Persons with whom the Special Representative met during her visit

Officials

Mr. Osmonakun Ibraimov, State Secretary of Kyrgyzstan;
Mr. Askar Aitmatov, Adviser to the President of the Kyrgyz Republic on International Affairs;
Ms. Rosa K. Aknazarova, Minister of Labour and Social Protection;
Mr. Arabaev Cholponkul Isaevich, First Deputy Minister of Justice;
Mr. C. Dubanaev, First Deputy Minister of the Interior,
Mr. Januzakov, Chairman of the Security Service, Minister of National Security;
Mr. Tchubak Abyshkaev, General Prosecutor of Kyrgyzstan;
Ms. Cholpon T. Baekova, Chairperson of the Constitutional Court;
Ms. K. Aknazarova, Deputy Chief of the Supreme Court;
Mr. Naken Kasiev, Governor of Osh oblast;
Ms. Oksana Malevania, Chairman of the Commission on Human Rights of Kyrgyzstan;
Talant Mambetov, Chief of the Department of International Affairs of the Constitutional Court;
Mr. Evgueni Kablukov, Head of the United Nations Division of the Ministry for Foreign Affairs;
Nuran S. Niyazaliev, Attaché, Western Countries Department, Ministry for Foreign Affairs;
Mr. B. Ishimov, Head of the Academy of the Ministry of Interior.

International organizations and diplomatic community

Mr. Ercan Murat, Resident Representative and United Nations Resident Coordinator;
Mr. Yuri Misnikov, UNDP Deputy Resident Representative;
Ms. Katarina Szecsi Asbrink, Assistant to the Resident Coordinator;
Mr. Richard Young, UNICEF Assistant Representative;
Ms. Kakoli Ray, IOM Chief of Mission;
Dr. Isabelle Mihoubi, UNHCR, Senior Regional Legal Adviser;
Mr. Nikolai Melenewski, Director, OSCE Osh;
Ms. Kathleen Samuels, OSCE Political/Human Dimension Officer;
Mykola Melenevsky, OSCE Economy/Ecology Officer;
Ms. Heike Gabriel, Chargé d'affaires of the German Embassy;
Mr. Peter Ekstrom, Chargé d'affaires of the United States Embassy.

Non-governmental organizations

Civil and political rights: Ms. Tolekan Ismailova, President of the Coalition for Democracy and Civil Society; Mr. Abdraham Usupbaev, Chairman of the Kyrgyz Committee for Human Rights; Mr. Noomagan Arkabaev, Coordinator of the Kyrgyz Committee for Human Rights; Mr. Korgoldoev; Ms. Natalia Ablova, President of the Kyrgyz-American Bureau on Human Rights and the Rule of Law; Chairman of the

Council of Elders; Chairman of the Auditing Commission; Mr. Bahadir Ahmedov, Chairman of the Committee for Protection of Muslims' Rights; Mr. Valery Uleev, Director-Coordinator of Human Rights Justice; Mr. Ghazi, representative of the International Crisis Group; Amnesty International Group of the American University; Mr. Aldarov, Deputy President of the Human Rights Movement of Kyrgyzstan; Mr. Sergey Ryspekov, Director of the National Council of Development; Mr. Igor Varenikov, Chairman of the Bishkek Helsinki Group; Mr. Erich Brainich, Director of Mercy Corps; Ms. Azizulla Gaziev and Saniya Sagnaeva, political analysts of the International Crisis Group; Mr. Bootaliev, Kyrgyz Committee; Mr. Eliseev, Kyrgyz Committee;

Economic, social and cultural rights: Mr. Fomenko, President of the Public Association for Social Protection of the Population; Ms. Umetalieva Toktaim, Chairperson, Board of the Non-Governmental and Non-Commercial Organizations' Association; Ms. Gulnara Mamutbetova, member of the Non-Governmental and Non-Commercial Organizations' Association;

Right to environment and peace: Ms. Kalia Moldogazieva, Director of Tree of Life; Ms. Chinara Jakypova, Director of the Institute for War and Peace Reporting;

Youth: Ms. Maria Lisitsyna, Chairwoman of the Youth Human Rights Group; Mr. Dmitry Kabak, Programme Coordinator of the Youth Human Rights Group;

Women: Ms. Zamira Akbagysheva, President of the Women's Congress of Kyrgyzstan; Ms. Dshamilja Alymbekova, Director of UMUT; Ms. Alexandra Eliserenko, Director of CHANS; Ms. Asiya Sasykbaeva, Director of Interbilim; SEZIM;

Refugees: Mr. Rozmukhamet A. Abdulbakiev, Chairman of the Uigur Society of the Kyrgyz Republic (ITTIPAK); representatives from Tajikistan, Afghanistan and Chechnya.

Academics

Ms. Bolchurova Ishengul, Rector of the Humanitarian University of Kyrgyzstan.

Media professionals

Mr. Ernes Nurdinov, journalist; Mr. Christoph Schuepp, Country Director of Internews; Mr. Victor Zapolski from Delo No; Mr. A. Kim from Maja Stolizia; Mr. Alisher Khamidov, Executive Director of the Media Resource Center in Osh; Res Publica.

Political parties

Mr. Emil Aliev, Chair of Ar Namy's; Mr. Victor Chernomovets, deputy leader of the Democratic Movement of Kyrgyzstan.

Jurists

Mr. Urmat Sovetov, jurist; Ms. Liubov Ivanova, lawyer; Mr. Ravshan Gapirov, lawyer; Mr. Mamudov, lawyer; Mr. Maychiev Shamaral, President-elect and member of the board of the American Bar Association; Mr. Azamat Kerimbaev, staff attorney of the American Bar Association; Mr. Stuart Kahn, Rule of Law Liaison of the American Bar Association; President of the Kyrgyz Bar Association.

Trade unionists

Mr. Sagyn Bozgunbaev, President of the Federation of Trade Unions.